

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES INVESTOR PROTECTION
CORPORATION,

Trustee-Applicant,

v.

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Defendant.

Adv. Pro. No. 08-01789 (SMB)

SIPA Liquidation

(Substantively Consolidated)

In re:

BERNARD L. MADOFF,

Debtor.

IRVING H. PICARD, Trustee for the
Liquidation of Bernard L. Madoff Investment
Securities LLC,

Trustee,

v.

NATIXIS, NATIXIS CORPORATE &
INVESTMENT BANK (f/k/a IXIS
CORPORATE & INVESTMENT BANK),
NATIXIS FINANCIAL PRODUCTS INC.,
BLOOM ASSET HOLDINGS FUND, and
TENSYS LIMITED,

Defendants.

Adv. Pro. No. 10-05353 (SMB)

**STIPULATION AND ORDER CONCERNING THE
TRUSTEE'S MOTION FOR LEAVE TO AMEND**

Irving H. Picard, Trustee for the substantively consolidated SIPA liquidation of Bernard L. Madoff Investment Securities LLC and the estate of Bernard L. Madoff (the "Trustee"), and defendants Natixis Financial Products LLC (as successor-in-interest to Natixis Financial Products Inc.) ("Natixis FP"), Natixis S.A. (in its own capacity and as successor-in-interest to IXIS Corporate & Investment Bank), and Bloom Asset Holdings Fund ("Bloom") (collectively, the

“Defendants,” and together with the Trustee, the “Parties”), by and through their respective undersigned counsel, agree as follows:

WHEREAS, on July 6, 2014, the District Court entered an Opinion and Order ruling on extraterritoriality and international comity issues (the “District Court ET Decision”) and returned certain matters to the Bankruptcy Court for further proceedings consistent with the District Court ET Decision. *See SIPC v. BLMIS (In re Madoff)*, 513 B.R. 222 (S.D.N.Y. 2014);

WHEREAS, on November 22, 2016, the Bankruptcy Court issued a Memorandum Decision Regarding Claims to Recover Foreign Subsequent Transfers (the “Bankruptcy Court ET Decision”) dismissing certain claims to recover subsequent transfers received from Fairfield Sentry Limited, Fairfield Sigma Limited, Fairfield Lambda Limited, Kingate Global Fund Limited, Kingate Euro Fund Limited, and Harley International (Cayman) Limited on grounds of international comity. *See Picard v. Bureau of Labor Ins. (SIPC v. BLMIS)*, Adv. Pro. No. 08-01789 (SMB), 2016 WL 6900689 (Bankr. S.D.N.Y. Nov. 22, 2016);

WHEREAS, the Bankruptcy Court ET Decision dismissed all claims against Natixis S.A., Bloom, and Tensyr Ltd. (collectively, the “Dismissed Defendants”), as well as certain claims against Natixis FP (the “Dismissed Claims”);

WHEREAS, on March 21, 2017, the Trustee appealed both the District Court ET Decision and the Bankruptcy Court ET Decision to the United States Court of Appeals for the Second Circuit (the “Appeal”). *See Notice of Appeal*, Adv. Pro. No. 10-5353 (SMB) (ECF No. 130);

WHEREAS, the Trustee and Natixis FP agreed to a schedule for litigation of the Trustee’s remaining claims against Natixis FP in this adversary proceeding (the “Action”) and submitted a briefing schedule on the Trustee’s motion for leave to amend his complaint (the “Motion for Leave to Amend”), which the Bankruptcy Court so ordered. *See So Ordered Stipulation*, Adv. Pro. No. 10-5353 (SMB) (ECF No. 168);

WHEREAS, while briefing on the Motion for Leave to Amend was ongoing, the Second Circuit issued an Order and Opinion vacating the District Court ET Decision and remanding the case to this Court for further proceedings consistent with its ruling (the “Second Circuit Decision”). *See In re Picard*, Case No. 17-2992, -- F.3d --, 2019 WL 903978 (2d Cir. Feb. 25, 2019) (ECF No. 1311-1);

WHEREAS, on March 11, 2019, Defendants joined the Petition for Panel Rehearing and Rehearing *en banc* of Defendants-Appellees (the “Rehearing Petition”), which, pursuant to Fed. R. App. P. 41(b), stayed the issuance of the mandate from the Second Circuit Decision.

WHEREAS, to avoid piecemeal litigation and to facilitate an efficient resolution of the Trustee’s claims following the Second Circuit Decision, the Parties believe that it is in their and the Court’s best interests to withdraw the Motion for Leave to Amend so as to allow him to incorporate the Dismissed Defendants and the Dismissed Claims that may ultimately be reinstated after the issuance of the mandate from the Second Circuit Decision;

WHEREAS, Natixis FP agrees with the withdrawal of the Motion for Leave to Amend;

IT IS HEREBY STIPULATED AND AGREED that:

1. The Motion for Leave to Amend is withdrawn and all pending briefing and scheduling is withdrawn as moot.
2. Within 60 days of the issuance of the mandate from the Second Circuit Decision, the Trustee shall file an amended complaint in this Action; any remaining Defendants in the Action shall move to dismiss or otherwise respond to the Trustee’s amended complaint within 60 days after it is filed; the Trustee shall file an opposition, if any, within 60 days of any motion to dismiss; Defendants shall file a reply, if any, within 30 days of the Trustee’s opposition.
3. The withdrawal of the Motion for Leave to Amend is without prejudice to any future motion seeking leave to file an amended complaint.

4. This stipulation is binding only upon Natixis S.A. and Bloom to the extent that the Bankruptcy Court has subject matter jurisdiction over the claims against them in the Action.
5. Except as expressly set forth herein, the Parties reserve all rights and defenses they may have, and entry into this Stipulation shall not impair or otherwise affect such rights and defenses, including, without limitation, any defenses based on failure to state a claim upon which relief can be granted and lack of jurisdiction.

{Remainder of this page intentionally left blank}

6. This Stipulation may be signed by the Parties in any number of counterparts, each of which when so signed shall be an original, but all of which shall together constitute one and the same instrument. A signed facsimile, photostatic, or electronic copy of this Stipulation shall be deemed an original.

Dated: March 27, 2019
New York, New York

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own capacity and as successor-in-interest to
IXIS Corporate & Investment Bank), Natixis
Financial Products LLC (as successor-in-
interest to Natixis Financial Products Inc.),
and Bloom Asset Holdings Fund*

SO ORDERED this 28th day of March, 2019.

/s/ STUART M. BERNSTEIN
HON. STUART M. BERNSTEIN
UNITED STATES BANKRUPTCY JUDGE